SUPREME COURT, U. S.
FILED

No. 633

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

CANDIS O. RAY, t/a CANDIS O. RAY AGENCY,
PETITIONER

v.

KANSAS CITY STOCKYARDS COMPANY OF MAINE, a corporation, t/a GOLDEN OX RESTAURANT, and NATIONAL BROADCASTING COMPANY, INC., *et al.*,
RESPONDENTS

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF OF RESPONDENTS KANSAS CITY STOCKYARDS COMPANY OF MAINE, A CORPORATION, AND NATIONAL BROADCASTING COMPANY, INC., IN OPPOSITION

Trammell, Rand & Nathan
Thomas G. Laughlin
Attorneys for Respondents
1730 K Street, N.W.
Washington, D.C. 20006

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia

BRIEF FOR THE RESPONDENTS, KANSAS CITY STOCKYARDS COMPANY OF MAINE, A CORPORATION, T/A GOLDEN OX RESTAURANT, AND NATIONAL BROADCASTING COMPANY, INC., IN OPPOSITION

OPINIONS BELOW

The order of the District Court denying Petitioner's motion to set aside settlement and dismissal of her action below (Exh. A, App. p. 1a, infra) is not reported. The order of the Court of Appeals dismissing the appeal (Exh. B, App. p. 2a, infra) is not reported.

JURISDICTION

Petitioner's complaint below was dismissed as settled and satisfied on August 26, 1966. The order of the District Court denying Petitioner's motion to set aside the settlement and dismissal with prejudice was entered October 17, 1969. The order of the Court of Appeals granting Respondents' motion to dismiss the appeal from said denial was entered on April 28, 1970 and a petition for re-hearing was denied on June 3, 1970. The petition for writ of certiorari was filed on September 1, 1970, invoking this Court's jurisdiction under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Whether, in light of the facts and evidence, the petition for writ of certiorari filed herein has any substance in fact or law.

2. Whether the review sought by the Petitioner is available under Rule 19 of this Court's Rules.

STATUTES AND RULES INVOLVED

28 U.S.C. § 1254(1); Rule 60(b) F.R.C.P.

STATEMENT

Introduction

This case involves an attempt by the Petitioner herein to seek review of the dismissal of her appeal to the United States District Court for the District of Columbia Circuit, from an order of the United States District Court for the District of Columbia denying Petitioner's motion to reinstate a complaint dismissed three years prior to such motion. Petitioner (who at all times was represented by experienced and reputable counsel) agreed to the dismissal, (which she sought to set aside three years later) after lengthy negotiations, in consideration of the dismissal of a substantial

counterclaim against her, together with the payment to her of the sum of Two Thousand Dollars.

In aid of her motion and in aid of her petition here, Petitioner makes allegations of fraud and conspiracy against her own counsel and all opposing counsel, which allegations were considered by the Courts below and found totally without substance. These allegations of fraud and conspiracy do not even relate to the merits of the settlement, but to the fact that—by agreement of counsel—the deposition of a witness (suppressed by order of the District Court) was not transcribed. The same groundless allegations of fraud and conspiracy were the subject of a complaint to the Grievance Committee and a complaint to the United States Attorney for the District of Columbia. Neither authority took any action.[1]

In view of the obvious lack of merit of the petition for certiorari, counsel for Respondent Golden Ox determined that no response was necessary, but rejected the repeated allegations of fraud and conspiracy for the record in a letter to the clerk of this Court (Exh. D, App. p. 9a, infra). The Clerk of the Court telephoned counsel for Respondent to indicate that the rules of this Court did not provide for the

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[1] Copy of Petitioner's complaint to the Grievance Committee and Respondent's Counsel's verified answer to the complaint are attached hereto as Exh. C., App. p. 3a, infra. The gravamen of the complaint is as follows:

The deposition of an employee of Respondent Golden Ox was taken by Petitioner's Counsel while a motion by Counsel for Co-Defendant Impact to re-schedule it was pending. Petitioner was present during the taking of the deposition. The motion resulted in an order suppressing the deposition, with leave to take it again when Counsel, who had moved to re-schedule it, could be present. Pending the re-taking of the deposition, all Counsel, including Petitioner's Counsel, agreed that the suppressed deposition would not be transcribed. Although Petitioner later had the deposition transcribed and filed with the Court, without objection of any of opposing Counsel, she has based all her allegations of fraud and conspiracy on this occurrence.

filing of a letter in place of a formal response, and returned the letter to counsel. Counsel then formally waived the filing of a response but was directed to file the instant opposition, by a letter from the Clerk of the Court (Exh. E, App. p. 15a, infra).

The Facts

Respondent Kansas City Stockyards Company of Maine, a corporation, owns and operates the Golden Ox Restaurant (hereinafter referred to as Golden Ox) in Washington, D.C. In 1964 Respondent, National Broadcasting Company, Inc., through its Washington affiliate, broadcast certain advertisements for the Golden Ox. In 1963 and 1964 Petitioner, CANDIS O. RAY, trading as the Candis O. Ray Agency, operated an advertising agency in the District of Columbia. She had handled advertising for the Golden Ox in 1963 and 1964.

The Golden Ox, sometime in 1964, terminated Petitioner's employment in favor of her successor, Impact Advertising Agency, Inc., operated by one Ruth Graze. On January 25, 1965, Petitioner filed a complaint (Exh. F, App. p. 16a, infra) alleging infringement of copyright, unfair competition, and breach of contract, against Golden Ox, National Broadcasting Company, Impact Advertising Agency, Inc., and Gregory J. Aires, a publishing company handling printed Golden Ox advertising. Golden Ox filed a substantial counterclaim alleging wrongful appropriation of advertising material and interference with contractual relations. After discovery, extended negotiations between the Golden Ox, National Broadcasting Company[2] and Petitioner resulted in a settlement and disposition of the suit as among these three parties by Petitioner accepting $2,000 and dismissal of the counterclaim in full settlement of her claim.

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[2] The Golden Ox agreed to indemnify or hold harmless National Broadcasting Company in the event any claim, suit or demand arose concerning the advertising.

Petitioner at all times was represented by experienced and reputable counsel. Her first attorney, John S. Semmes, rejected a settlement offer of $500.00 and later agreed to accept an offer of $1,000.00 (Exh. G, App. p. 19a, infra) for a full and total release of all claims and an assignment to the Golden Ox of whatever copyright claims Petitioner might have. Petitioner relieved Mr. Semmes and retained James S. Gardner, Esq., an equally experienced and reputable member of the local bar. After extended further negotiations, Petitioner through counsel accepted $2,000.00 in full settlement together with dismissal of the counterclaims. Petitioner at all times during the negotiations was represented by counsel of her choice and was fully advised of the negotiations as they progressed.

On August 26, 1966, agreements, including mutual releases and an assignment, were negotiated, drafted, discussed between Petitioner and her counsel, redrafted and finally executed. A praecipe dismissing the complaint with prejudice against the Golden Ox and National Broadcasting Company was filed and the counterclaim dismissed. (Exhs. H, I, J, App. pp. 20a, 24a, 26a, infra).

Petitioner continued her action against the remaining Defendants, Impact Advertising and Gregory J. Aires.

Golden Ox participated no further in this action until more than three years later when a "motion to set aside partial settlement and title transfer under duress" (Exh. K, App. p. 27a, infra) was filed and served on September 16, 1969. Golden Ox and National Broadcasting Company, Inc. filed their opposition, and after service of additional affidavits, exhibits and replies and a full hearing in open court, the District Court entered an order denying the motion (Exh. J, App. p. 26a, infra), holding that Petitioner's claim was without merit and barred by the doctrine of laches. Rehearing was denied by the District Court.

Petitioner appealed to the United States District Court for the District of Columbia from the order denying reinstatement. Golden Ox and National Broadcasting Company

filed a motion to dismiss the appeal, which was granted by the Court on April 28, 1970 (Exh. K, App. p. 27a, infra). Again, a petition for re-hearing was denied (June 3, 1970). The petition for writ of certiorari was filed September 1, 1970.

The proprietress of Impact Advertising Agency, Ruth Graze, had filed a separate complaint for slander against the Petitioner herein as Civil Action No. 737-65, which resulted in a judgment against Petitioner and which judgment was affirmed on appeal by the United States Court of Appeals for the District of Columbia in Case No. 20444, unreported. Neither the Golden Ox nor National Broadcasting Company was a party to such action.[3]

These two separate actions below, i.e., *Candis Ray v. Kansas City Stockyards Company, et al.*, C.A. #187-65 and *Ruth Graze v. Candis O. Ray*, C.A. #737-65, were never consolidated. The Petitioner's appeals from each of the judgments likewise were never consolidated into one action, although Petitioner now seems so to allege.

Petitioner is a mature, educated and sophisticated businesswoman, experienced in the competitive world of advertising and finance, who, in the five-year course of her litigation with Respondents, has been represented by a battery of experienced attorneys, including the following members of the local Bar: Leonard Collins, Fulton Brylawski, Mark P. Friedlander, Harry N. Rosenfield, Turner Smith, James S. Gardiner, and John G. Semmes. She now proceeds in proper person.

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[3]The slander complained of consisted of an alleged statement by Petitioner to the effect that the change of advertising agencies had been brought about by an improper relationship between the Golden Ox Manager, Snyder, and Miss Graze.

ARGUMENT

I. The Action of the Courts Below Is in Compliance with Rule 60(b), F.R.C.P., and Shows No Abuse of Discretion by Either Court.

The instant case constitutes an abuse by the Petitioner of the judicial process. Rather than being entitled to relief by this Court because of any actual or imagined infringement of her Constitutional, legal or other rights, the Petitioner, in filing this petition, abuses the processes of justice to perpetuate an ancient grudge.

Over thirty-six months after the dismissal of Petitioner's action, with prejudice, Miss Ray changed her mind about the settlement she had accepted, which brought about this dismissal, and filed a motion to set aside both the settlement and the dismissal, vaguely alleging fraud and conspiracy as grounds for her motion. Two years prior to making this motion, she had made the same allegations of fraud and conspiracy in a complaint to the Grievance Committee.

The District Court, after a full hearing, found that her allegations were without substance and that her motion to set aside the settlement that she had entered into after long negotiations with the advice of her experienced and reputable attorneys, was barred by laches. In dismissing her appeal from the denial of the belated motion, the Court cited *Mayfair Extension, Inc. v. Magee*, 241 F.2d 453, 100 U.S. App. D.C. 48, 1967, which holds:

> "Under this rule [60(b)] a default judgment may be set aside for 'fraud . . . , misrepresentation, or other misconduct of an adverse party.' Appellant argues that a motion to vacate for such reason may be brought any time within one year. But the rule requires that 'The motion shall be made within a reasonable time, *and* [when based upon Rule 60(b)(3)] not more than one year after the [default] judgment . . .'. Thus it was not only necessary that the motion be filed within one year, but also that it be filed within a reasonable time within the one-year period. Upon the record before us,

> the latter requirement is not satisfied. The District Court was, therefore, correct in denying the motion."
> – at p. 454.

In *MacLeod v. D.C. Transit System, Inc.*, 283 F.2d 194, 108 U.S. App. D.C. 399 (1960), where the plaintiff sought to set aside a stipulation of settlement 363 days after judgment was entered, the Court held:

> ". . . We agree that the lapse of time between the settlement on consent judgment and the time when she moved to set aside the settlement also affords a basis for the District Court's action.
>
> * * *
>
> The motion to set aside the settlement and judgment was one addressed to the sound discretion of the District Court. The record shows it was carefully considered and that this discretion was not abused . . ."
> – at p. 195.

MacLeod was a factual situation similar to the instant one. The plaintiff had a succession of attorneys and thereafter quarreled with them. In the instant case, as in *MacLeod*, the Trial Court did not abuse its discretion. Petitioner was given ample opportunity to present any evidence to support the allegations of her motion. She presented none. Continuing complaints of the Petitioner, with a succession of attorneys, a total lack of evidence showing any inequity of the settlement or any fraud inducing her to accept it, show a lack of substance to support the petition filed herein. Continuing discharge of her attorneys, together with the fact that her remaining action in the District Court was twice dismissed and reinstated are ample evidence that this Petitioner was not denied any of her rights; indeed, the complaint against Respondents' attorney, the baseless allegations of fraud, and the continued litigation against Respondents without legal substance, causing much expense and inconvenience to all parties concerned and to the Courts, indicate a true case of harassment and abuse of the litigation process on the part of the Petitioner rather than any denial of her rights.

In *Westerly Electronics Corp. v. Walter Kidde & Co., Inc.*, 367 F.2d 269, 2 C.A. (1966), the Court of Appeals held that the Trial Court did not abuse its discretion in denying plaintiff's motion to amend or modify an order entered on a stipulated settlement of a civil action wherein appellant alleged newly discovered material evidence and fraud as a basis for the relief sought.

> ". . . Clearly, appellant has not demonstrated the abuse of discretion required to reverse the trial judge's decision on Rule 60(b) motion. No showing has been attempted under Rule 60(b)(1). Regardless of the question of whether Rule 60(b)(2) applies to a settlement order, appellant has not demonstrated that the scrap paper was truly newly discovered or that it could not have been found by due diligence. Also, the evidence would have been at best cumulative, and appellant waited ten months after the 'discovery' before moving to amend and modify. Finally, appellant has proffered no clear and convincing proof of fraud in the settlement as required in a Rule 60(b)(3) motion." [Footnotes and citations omitted].
>
> – at p. 270.

The allegation of Petitioner that fraud was perpetuated upon her, thereby violating the Bill of Rights and the Fourteenth Amendment and/or rights of equal protection of the law, or deprivation of due process of the law, is totally without substance.

II. Review Is Not Indicated by Any Reasons Within Rule 19 of the Rules of this Court, Nor Required in the Exercise of this Court's Supervisory Powers.

Petitioner has not shown the conflict of the decision below with that of another Circuit Court of Appeals, or a decision below involving an important question of Federal Law which should be settled by this Court. She has not shown the decision below to be in conflict with any decision of this Court nor has she shown that the Court below departed from the accepted and usual course of judicial procedure,

nor any other "special and important" reasons (within the purview of Rule 19 of this Court) for granting her petition. Nor has petitioner shown any reason why this Court in exercise of its supervisory power should review the considered judgment of two lower Courts. On the contrary, the record shows that Respondents and their Counsel should be protected against the continued harassment by Petitioner through the finality of a denial of her Petition herein.

CONCLUSION

For the reasons stated above, the petition for writ of certiorari should be denied, with costs to be assessed against Petitioner.

Respectfully submitted,

TRAMMELL, RAND & NATHAN

By Thomas G. Laughlin
Attorney for Respondents
1730 K Street, N.W., Suite 308
Washington, D.C. 20006

December, 1970.

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
For the District of Columbia

CANDIS O. RAY, t/a CANDIS O. RAY AGENCY, Plaintiff,	]	
v.	]	Civil Action
KANSAS CITY STOCK YARDS COMPANY OF MAINE, a corporation, t/a GOLDEN OX RESTAURANT, et al., Defendants.	]	No. 187-65

[Filed October 17, 1969]

ORDER

Upon consideration of plaintiff's motion to set aside partial settlement and title transfer effected under duress, defendant's reply, plaintiff's answer to defendant's opposition, and the exhibits submitted by plaintiff in support thereof, and having held a hearing on this motion, it being the opinion of the Court that plaintiff's claim that the settlement signed by plaintiff on August 26, 1966, was entered into under duress, has no merit, and further that this motion is barred by the equitable doctrine of laches, it is this 17 day of October, 1969,

ORDERED that plaintiff's motion be, and the same hereby is, denied.

John J. Sirica
United States District Judge

EXHIBIT B

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 23,789 September Term, 1969

Candis O. Ray
t/a Candis O. Ray Agency,
Appellant

v.

Kansas City Stock Yards Company of Maine,
t/a Golden Ox Restaurant, et al.,

Before: Bazelon, Chief Judge, MacKinnon, Circuit Judge, in Chambers.

[Filed April 28, 1970]

ORDER

On consideration of appellees' motion to dismiss the appeal and of the responsive pleadings filed with respect thereto, it is

ORDERED by the Court that appellees' aforesaid motion be granted and this appeal is dismissed. See *Mayfair Extension Inc. v. Magee*, 241 F.2d 453, 100 U.S. App. D.C., 48 (1957).

Per Curiam

EXHIBIT C

CANDIS O. RAY AND ASSOCIATES
Public Relations

1545 Eighteenth Street, Northwest, Washington, D.C. 20036

December 23, 1967

U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
Admissions and Grievance Committee
Room 6409
3rd and Constitution Avenue, N.W.
Washington, D.C.

Gentlemen:

This complaint is filed with the Grievance Committee on professional misconduct warrenting disciplinary action by the court against the following attorneys: James S. Gardiner, Hans A. Nathan and Jack H. Olender, in that agreement was entered into between and among plaintiff's counsel James S. Gardiner and the defendents' attorneys Hans A. Nathan and Jack H. Olender to withhold from the court records the perjured statement of the key witness - the deposition of Charles F. Snyder - which perjured statement is on the material issue at point in the case; i.e. the signing of a notice identified as PLAINTIFF'S EXHIBIT NO. "L" 3-5-65, copy attached hereto with statement of signature verification by Mr. Stanley Stoller.

Attached hereto are copies of Court Motions and Oppositions To Continue the deposition of Charles F. Snyder and Court Order per same dated May 17, 1965 granting leave of court for plaintiff to question Snyder again with plaintiff's remittance of $25.00 attorney's fee to one of the defense attorneys Hans A. Nathan, which I agreed to give and told my counsel Mr. Gardiner I would be very happy to pay it, for I wanted Olender present during the taking of Snyder's deposition (I submit herewith my letters to counsel Mr. Gardiner dated May 7, 1965 and August 5, 1965 in which

it will be noted that I literally beg him to continue the questioning of Charles Snyder, and agreed to pay him anything he asked. He asked me for a hundred dollars to continue the discoveries, and I agreed to pay it, as noticed by my letter dated August 5, 1965.) Though Mr. Gardiner had taken the case and filed it the way he wanted to, and on the basis of contingency fee, I even agreed to any terms he demanded if he would only continue the discoveries and questioning of Snyder again, for I felt this certainly was a crucial point in the case, especially made clear by the conspiracy between the defendents' attorneys Hans A. Nathan and Jack H. Olender not to appear at the same time for the taking of Snyder's deposition so that the deposition could be placed in a moot or possible invalid position. Three extensions were granted at requests for put-offs by defendents' attorneys Nathan and Olender for the taking of Snyder's deposition (see letters attached between attorneys) and three different dates set up for the actual taking of the Snyder deposition wherein excuses were made by Nathan or Olender on why one or the other could not make an appearance. Once, at a scheduled time agreed by all attorneys for the taking of the Snyder deposition Olender showed up - on April 5, 1965 - and Mr. Nathan did not (thereby having to pay costs of the court reporter, which Mr. Nathan paid, as is evidenced by letters attached between Gardiner and Nathan concerning same) and at this showing of Mr. Olender on the above date he (Olender) asked my counsel Mr. Gardiner and me if we had received his client's libel and slander suit (instituted by Olender for one of the defendents, Mrs. Graze of Impact Advertising as a counter defense to the Infringement (this suit) . . . . . as reported by Mrs. Graze's witness William Legg in his deposition . . . . . wherein he states (page 15) that he telephoned Mrs. Graze about the matter and she reported "Miss Ray had filed suit against her for Infringement of copyright and she had filed suit for slander".)

Further agreement between Mr. Nathan and Mr. Olender is noted on page 3 and Page 4 of Charles F. Snyder's depo-

sition wherein it is stated by Nathan that he received a phone call from Olender concerning the service of a Motion To Continue the taking of Snyder's deposition which service of notice would relieve him (Nathan) of having to appear and would relieve him of "producing the witness" Charles F. Snyder. Note that Olender agreed, however, that if Nathan did produce the witness Charles F. Snyder and appeared anyway he would get the deposition suppressed from the court records, whereupon Mr. Nathan did appear with the witness Charles F. Snyder. (Note attached pages 3 and 4 from Charles F. Snyder's deposition which was taken on date April 14, 1965 in the law office of plaintiff's counsel, James S. Gardiner, 1053 National Press Building, Washington, D.C.) The only persons present at Snyder's deposition testimony were plaintiff's counsel James S. Gardiner who questioned Snyder, Hans A. Nathan counsel for Snyder, and myself (plaintiff) and the court reporter (or "Notary For The District Of Columbia", as stated in deposition) Mr. Hilmar K. Klamans, Jr. who transcribed Snyder's testimony at the deposition. No other persons were present at the deposition other than the names mentioned above.

At the taking of Snyder's deposition I was present, however I did not hear the low voices of the attorneys concerning agreements about "suppressing" or court motions, nor would I have understood what they were talking about nor understood what it meant if I had listened to what they were saying. All I knew was that we were gathered at this meeting for the purpose of a testimony under oath to be recognized by the court. I had no idea that I was being defrauded or deceived in any way. When I heard Snyder strongly deny that he had signed the notice - EXHIBIT "L" 3-5-65 (identified and attached hereto) I then looked squarely in the eyes of Snyder's counsel Hans A. Nathan sitting next to Snyder and Mr. Nathan nodded his head up and down and grinned at me. I knew that Mr. Stan Stoller had witnessed Snyder sign his name to the notice and that as further evidence the monthly billing of the Golden Ox Restaurant, of which Charles Snyder was the manager, was

indeed going through the Impact Advertising, as noticed by the authorized document.

The gross negligence of my counsel James S. Gardiner is evidenced by aforementioned facts, conclusively substantiated in that he made no objection to defense counsel, Jack Olender's demand of the court to suppress from the court records the Snyder deposition (See attached Court Order dated May 17, 1965 in which Olender, as previously agreed with Nathan, asked the court that Snyder's deposition taken on April 14, 1965 "not be used for any purpose in this cause." Mr. Gardiner had prior knowledge of this conspiracy.

Note also attached further evidence of collusion between opposition attorneys - Mr. Nathan's letter to my counsel James Gardiner dated August 5, 1965 in which Mr. Nathan states that they had an agreement . . . . . not to transcribe Snyder's deposition. I knew of no such agreement between attorneys. I offer numerous letters which I wrote to counsel Gardiner requesting that all depositions be filed with the court; that it is my understanding that they would be filed. The deposition of Snyder is the material issue at point. Quoting from Mr. Nathan's letter to Mr. Gardiner dated August 5, 1965. . . . . ." it had been agreed that it would not be transcribed." I knew of no such agreement between attorneys and recently have the file on the case, which I have reviewed for the first time thoroughly.

I was advised by a local attorney who reviewed the file with me to report the herein disclosed misconduct by the named participating attorneys to the Grievance Committee. Upon further review of the file recently, and disclosures stated herein, I notified my counsel, James S. Gardiner, that because of the foregoing and on recent discoveries on review of the case, I had no choice but to file a complaint with the Grievance Committee. Such notice was given to Mr. Gardiner in November, this year (1967), and on December 7, 1967 I filed the complaint. Mr. Gardiner then filed motion to withdraw as counsel giving as his reason at the

hearing in open court that I reported to him about filing a complaint with the Grievance Committee. I appeared at the hearing of his motion held December 22, 1967 because I felt that Mr. Gardiner should return the fees I had paid him if he found he could not fullfil his obligations and responsibilities to the two connecting cases, for I had paid him all that he asked of me to represent me in these cases, yet after accepting my check in the amount of $250.00 for representation in the connecting libel suit brought by Mrs. Graze and Mr. Olender, he abandoned his responsibility to it, and so notified the opposition before telling me. Approximately one year later, on August 26, 1966, I accepted a settlement (agreement effected by instrument of release attached hereto) on the connecting Infringement suit under threat of counsel Gardiner that he would withdraw if I would not accept offer by Nathan.

I agreed to and accepted the settlement offer and conditions noted in Mr. Gardiner's letter of confirmation of settlement to Mr. Nathan dated September 16, 1965 under threat of withdrawal if I did not (see attached letter dated September 16, 1965 with referred-to praecipes filled out ready for filing).

Thereafter, Mr. Gardiner reported to me that he couldn't get Mr. Nathan to keep his commitments with him on the arrangements and agreements as to settlement offers, in which offers he included the Olender clients for settlement and also the separate case of Mrs. Graze - the libel and slander suit - instituted by Olender for her and who represented Mrs. Graze (Impact Adv.) in the Infringement suit.

On September (received by this office) 30, 1965 was yet another release prepared and offered by Mr. Nathan in which he included Olender's clients for dismissal in the Infringement suit, and also the separate case of libel and slander brought by Olender for Mrs. Graze, a defendant to the Infringement suit, as being dismissed as a bargaining condition and factor. (For complete details see my complaint filed with the Grievance Committee December 7, 1967)

Wherefore, I pray this Committee give careful consideration to the facts herein and offer and agree to appear at any designated hearings on same, if and when deemed proper and just.

Respectfully submitted,

/s/ Candis O. Ray

[Notarial certificate dated December 26, 1967]

EXHIBIT D

LAW OFFICES OF

TRAMMELL, RAND & NATHAN

* * *

WASHINGTON, D.C. 20006 * * *

February 26, 1968

Hon. Ralph A. Curtin
Secretary, Committee on Admissions and Grievances
United States Courthouse
Washington, D.C. 20001

Re: Complaint of Miss Candis O. Ray

Dear Mr. Curtin:

Receipt is acknowledged of your letter dated February 1, 1968, together with a complaint dated December 23, 1967, signed by Candis O. Ray, which complaint was received without the attachments referred to therein.

I also want to acknowledge with thanks the extension of one week of the time to reply to your letter, granted upon my telephone request made last week in view of my required presence in California during the early part of the week beginning February 19th.

I have reviewed Miss Ray's letter, my voluminous legal and correspondence files in this case, and a copy of the deposition of Mr. Snyder, which seems to be the gravamen of Miss Ray's complaint.

I want to reject as slanderous and completely unfounded the allegations of Miss Ray's complaint and the use of the terms "conspiracy," "perjured statement of the key witness," etc. The facts in this case, to the best of my recollection, are as follows:

This office represents Golden Ox Restaurant in this city. In June or July of 1964 we were contacted by John Gibson Semmes, Esq., of the firm of Semmes & Semmes, as

representatives of Miss Ray, asserting a claim by Miss Ray in connection with the severance of her relationship as advertising agent for our client, and her replacement by Impact Advertising, another agency. On September 30, 1964 Mr. Semmes withdrew from representing Miss Ray and was replaced by Mr. Gardiner, who filed suit against Golden Ox Restaurant (Golden Ox), the National Broadcasting Company (NBC), the Impact Advertising Company (Impact), and the Aires Publishing Company (Aires), in January of 1965. We entered our appearance for Golden Ox and NBC, Mr. Olender for Impact and Aires.

The deposition of Miss Ray was taken on March 5, 1965, after two postponements at the request of her attorney, and on March 17, 1965 I was served with Mr. Gardiner's notice for the deposition of Mr. Snyder, the local manager of Golden Ox, on March 25th. Having previous commitments to leave the country, I asked Mr. Gardiner for a postponement and we agreed on April 5th. The deposition was again rescheduled for April 14th, for reasons which do not appear from my file. On that day Mr. Olender called me, stated that he had filed a motion to continue the deposition (which had been served on me by hand) and asked me not to produce the witness. On the basis of research done in another case on this very question, I expressed my opinion to Mr. Olender that the mere filing of his motion did not invalidate the notice, but that I was prepared to meet him in Court on that day if he wanted to get an order. Mr. Olender declined and I told him that I would produce the witness, as required. I am attaching a xerox copy of the first two pages of the deposition which indicate clearly the basis for the production of the witness. Mr. Olender, over written and oral opposition by both Mr. Gardiner and myself, obtained an order suppressing the deposition, and I expected the deposition to be rescheduled in accordance with the order so permitting upon payment of a $25.00 counsel fee. Prior to rescheduling the deposition, Mr. Gardiner called me to inquire whether we could not increase our offer of settlement. Inasmuch as the highest demand in this case had been

Six Thousand Dollars and the highest offer we had made was Two Thousand Dollars, I reported to my client, inquiring if they would permit an increase in the settlement offer. My recommendation for an increase was rejected by the client with instructions to decrease the $2,000.00 offer by any additional expenses incurred by them. Therefore, I suggested to opposing counsel that Mr. Snyder's first deposition not be transcribed pending reconsideration by him of the $2,000.00 settlement offer or rescheduling of the Snyder deposition.

After a series of negotiations and communications with a third attorney for Miss Ray, settlement was finally reached, releases were exchanged and a payment of $2,000.00 was made in full satisfaction of all claims against our client.

Miss Ray, however, had the deposition transcribed and I understand from the reporter that the deposition was, in fact, filed in Court. None of the counsel in this case at any time objected either to her having the deposition transcribed, or her filing the deposition in Court.

Subsequent to the settlement, Miss Ray has periodically written letters to Mr. Snyder at his new place of employment and to the undersigned, all of which letters in some way or other refer to the deposition, and some of which included untruthful statements as, for instance, a letter by Miss Ray to Mr. Snyder on November 29, in which she states:

> "Mr. Nathan advises us that your sworn statement concerning the signing of the Notice Mrs. Graze mailed to the stations was your own idea, and that he did not advise you to swear that you did not sign it; that it was your own idea, and that the responsibility is yours. Is this correct?"

Needless to say, the undersigned did not advise Miss Ray of anything and, as a matter of policy, has studiously avoided any communication with her or answering numerous communications she has directed to the undersigned, regardless of whether she was, at the time of such communications, represented by counsel or not.

The undersigned had met Mr. Gardiner during some previous litigation and holds him in high regard. In all discussions of the case Mr. Gardiner's statements have been highly proper, adversary and, in my judgment, in the best interest of his client. I met Mr. Olender only in connection with this litigation, during which litigation he conducted himself in a most formal and adversary in nature manner, which might have been occasioned by the fact that the undersigned made a claim for indemnification against his client in the event of any holding of infringement by Impact resulting in liability of our clients.

There have been no communications between or among counsel except formal communications in connection with the case and, of course, there has been no conspiracy or agreement of any kind. Neither is the undersigned aware of any pressure put by Mr. Gardiner upon his client; on the contrary, I insisted on very explicit releases in this case because of the fact that negotiations for settlement in this case had broken down at least twice prior to final settlement, in view of some unexpected change of heart or counsel by Miss Ray.

My entire file is at the disposal of the Committee if the Committee so desires. In the event that the Committee desires further information, I shall ask my client to waive the attorney-client pi ege so as to enable me to document the above statements by my contemporaneous periodical reports to the clients.

Please be assured that this case was handled properly, carefully and professionally by the undersigned and that, to the best of my knowledge, it was equally carefully, professionally and ethically handled by opposing counsel Mr. Gardiner as well as by Mr. Olender, counsel for the co-defendants.

Respectfully submitted,

/s/ Hans A. Nathan

[Notarial certificate, 26 Feb. 1968]

[Attachment to Exhibit C, Deposition of Charles F. Snyder, Washington, D.C., April 14, 1965, in the United States District Court for the District of Columbia, caption omitted in printing.]

For the Plaintiff: James S. Gardiner, Esq.

For the Defendants Golden Ox Restaurant, National Broadcasting Company, and the witness: Trammall, Rand and Nathan, by: Hans A. Nathan, Esq.

* * * * *

[3] MR. GARDINER: I would like to make a brief statement.

At approximately 11:15 this date, I was served with a copy of a motion to continue the deposition filed on behalf of Jack H. Olender, attorney for Impact Advertising, Inc. In view of the fact that Mr. Olender did not request to go to court prior to the taking of the deposition of Charles Snyder, it is my opinion that the particular motion is of no effect.

I was willing if and when Mr. Olender wanted to take the matter up with the judge sitting in motions court and would have appeared at any time prior to the taking of this deposition.

That is all I have to say.

MR. NATHAN: I received a phone call from Mr. Olender prior to the service of the motion and I asked him whether he was going to go down to court and take it up as a preliminary matter. He said he was not and suggested to me that the filing of the motion relieved me from producing the witness. My own understanding of the law is different and I called you, Mr. Gardiner, and indicated to you that this was happening and I was personally willing to continue the deposition, but if you were not going to continue it, I felt that I would have to produce a witness and could not take a chance with regard to sanctions under Rule 37.

Mr. Olender said he would move that the deposition be [4] suppressed and not filed, but under the circumstances

I have produced the witness and will abide by the ruling of the court.

Personally, I think the motion is moot, but at the moment the deposition is being taken. It is up to you and Mr. Olender. I reserve the right to file such response to any further motion as may be indicated.

Thereupon,

CHARLES F. SNYDER

a witness, was called for examination by counsel for the plaintiff and, after having been sworn by the notary, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR THE PLAINTIFF

BY MR. GARDINER:

Q. Mr. Snyder, would you state your name? A. Charles F. Snyder, S-n-y-d-e-r.

Q. Where do you reside, Mr. Snyder?

MR. NATHAN: Excuse me a minute, Mr. Gardiner. Is it stipulated that all objections except as to the form of the question are reserved until the time of trial?

MR. GARDINER: That is agreed.

BY MR. GARDINER:

Q. Where do you reside? A. 16th and L Streets, Northwest, Washington, D.C.

* * * * *

EXHIBIT E

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES

November 18, 1970

Jack H. Olender, Esq.
701 Barr Building
Washington, D.C.

RE: RAY v. KANSAS CITY STOCKYARDS COMPANY OF MAINE, ETC., ET AL.
No. 633, October Term, 1970

Dear Mr. Olender:

Although you waived the right to file a brief in opposition to the petition for a writ of certiorari in the above-entitled case, the Court has instructed this office to direct counsel for the respondents to file such a response.

Forty printed copies of the response, together with proof of service thereof, should reach this office on or before December 18, 1970.

Very truly yours,

E. ROBERT SEAVER, Clerk

By /s/ E. P. Cullinan
Chief Deputy

jmh

cc: Hans A. Nathan, Esq.
Candis O. Ray, Esq.

EXHIBIT F

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA
Civil Division

Civil Action No. 187-65

[Caption omitted in printing]

[Filed Jan. 25, 1965]

COMPLAINT FOR INFRINGEMENT OF COPYRIGHT, UNFAIR COMPETITION AND BREACH OF CONTRACT

Comes now the plaintiff, by and through her attorney and states the following:

1. That this Court has jurisdiction of this cause of action pursuant to Title 28, §1338, United States Code.

2. That the plaintiff is a citizen of the United States, a resident of the District of Columbia and has been operating an advertising and public relations agency, specializing in radio and television.

3. That the defendants are doing business in the District of Columbia.

4. That defendant, Kansas City Stock Yards Company of Maine, T/A Golden Ox Restaurant is indebted to plaintiff for breach of contract in the sum of Nine Hundred Three and 60/100 ($903.60) Dollars for services rendered and commissions due for public relations and advertising when said defendant terminated its contract with plaintiff on May 20, 1964.

5. That prior to June, 1964, plaintiff created and wrote material to be used on radio and television entitled "Spoken Commercials" which contains a large amount of material wholly original with plaintiff and is copyrightable subject matter under the laws of the United States.

6. That on June 12th and 17th, 1964, plaintiff complied in all respects with Title 17, U.S. Code and all other laws

governing copyright, and secured the exclusive rights and privileges in and to the copyright of said commercials and received from the Register of Copyrights certificates of registration, dated and identified as follows:

June 12, 1964,	Class C,	No. 16869, and
June 17, 1964,	Class C,	No. 16870,

attached hereto and made a part hereof.

7. That since the 12th and 17th days of June, 1964, the plaintiff has been and still is the sole proprietor of all rights, title and interest in and to the copyrights in said spoken commercials.

8. That after June 17, 1964, the defendants infringed said copyrights by publishing in magazines and placing upon radio and television stations advertisements about the defendant, Kansas City Stock Yards Company of Maine, a corporation, T/A Golden Ox Restaurant, which were copied largely from plaintiff's copyrighted material, entitled "Spoken Commercials."

9. That the defendants have been notified that the advertising material had been copyrighted and the defendants have continued to infringe the copyrights of plaintiff.

10. That after June 17, 1964, and continuously to the present time, the defendants have been using plaintiff's copyrighted material and have thereby been engaging in unfair trade practices against plaintiff to plaintiff's irreparable damage.

WHEREFORE, plaintiff demands the following:

1. That the defendants, their agents, and servants be enjoined during the pendency of this action and permanently from infringing said copyrights of said plaintiff in any manner.

2. That the defendants be required to pay to plaintiff such damages as plaintiff has sustained in consequence of the infringement by the defendants of said copyrights and said unfair competition and to account for:

(a) all gains, profits and advantages derived by the defendants by said trade practices and unfair competition; and

(b) all gains, profits, and advantages derived by the defendants as to the court shall appear proper within the provisions of the copyright statutes, but not less than Two Hundred Fifty ($250.00) Dollars.

3. That the defendants pay to plaintiff the costs of this action and reasonable attorney's fees to be allowed to the plaintiff by the Court.

4. That judgment be entered against the defendant, Kansas City Stock Yards of Maine in the sum of Nine Hundred Three and 60/100 ($903.60) Dollars plus interest from May 20, 1964.

5. That plaintiff have such other and further relief as is just and proper.

James S. Gardinder
Attorney for Plaintiff

EXHIBIT G

CITY OF)
WASHINGTON) SS:

AFFIDAVIT

JOHN GIBSON SEMMES, being duly sworn, deposes and says as follows:

1. That during the period June 1964 through on or about September 1964 inclusive he represented Miss Candis O. Ray in negotiations arising from the controversy between Candis O. Ray and others identified in the present Civil Action No. 187/65.

2. That in his representation of Miss Ray he served in a legal capacity as an attorney of the law firm Semmes & Semmes, then located at 1000 Connecticut Avenue, N.W., Washington, D.C.

3. That during the course of the negotiations an offer was made by counsel representing the defendants in said Civil Action for settlement, the figure then being set at $500.00 and which said offer was later increased from $500 to $1,000. Under the circumstances, the affiant then representing Candis O. Ray recommended that she reject the initial offer of $500 and accept the later offer of $1,000.

Further affiant sayeth not.

/s/ John Gibson Semmes

[Jurat dated March 18, 1968.]

EXHIBIT H

AGREEMENT OF SETTLEMENT AND MUTUAL RELEASE

THIS AGREEMENT, made this 26th day of August, 1966, by, between and among: (1) CANDIS O. RAY, individually, and trading as and on behalf of CANDIS O. RAY AGENCY (hereinafter collectively called RAY); (2) KANSAS CITY STOCKYARDS COMPANY OF MAINE, a corporation, on its own behalf and trading as and on behalf of GOLDEN OX RESTAURANT (hereinafter collectively called GOLDEN OX); and (3) NATIONAL BROADCASTING COMPANY, INC., a corporation (hereinafter called NBC).

WITNESSETH:

WHEREAS, RAY has filed in the United States District Court for the District of Columbia a suit pending there as Civil Action No. 187-65 against GOLDEN OX, NBC and certain other defendants, for damages and other relief; and

WHEREAS, all defendants have filed answers in said Civil Action No. 187-65 denying the claims of RAY and asserting that RAY is not entitled to damages or other relief; and

WHEREAS, each party denies all claims and allegations made in the complaints, answers or counterclaims filed against such party; and

WHEREAS, all parties hereto are desirous of settling once and for all, all claims that they may have or have had, or may in the future have against one another from all transactions between them to date, in the manner herein set forth and by and through this Agreement;

NOW THEREFORE, the parties, in consideration of the mutual promises and covenants herein contained, certain monies paid to RAY by GOLDEN OX, the dismissal of the litigation as to the parties hereto, as herein agreed, and other valuable consideration, the receipt of all of which consideration is hereby acknowledged, agree as follows:

1. RAY agrees to assign to GOLDEN OX all right, title and interest in Copyright C-16869 and C-16870, and all the material, ideas and language expressly or impliedly contained therein or related thereto, and to execute the separate instrument of assignment attached hereto, which assignment permits the use of certain material by RAY upon the terms and conditions set out therein.

2. GOLDEN OX agrees to pay to RAY and RAY agrees to accept, in full payment and satisfaction of all her claims against all and any of the parties hereto, the sum of Two Thousand Dollars ($2,000.00).

3. All parties hereto authorize and direct their respective counsel to sign and file praecipes in the United States District Court for the District of Columbia, entering the complaint in Civil Action No. 187-65 and all counterclaims therein, as settled, satisfied and dismissed with prejudice as to them.

4. NBC agrees that GOLDEN OX has fully performed its obligation to defend and hold NBC harmless in connection with the claims made by RAY in the said Civil Action No. 187-65.

5. CANDIS O. RAY, both individually and for and on behalf of, and trading as CANDIS O. RAY AGENCY, hereby releases and discharges KANSAS CITY STOCKYARDS COMPANY OF MAINE, a corporation, trading as GOLDEN OX RESTAURANT, NATIONAL BROADCASTING COMPANY, INC., a corporation, their successors and assigns, their past and present officers, directors, stockholders, employees, agents (except remaining defendants to the said Civil Action No. 187-65) attorneys and all other persons acting on their behalf, of and from all manner of action or actions, suits, debts, claims, liabilities, controversies, damages and demands, whether in law or in equity, contract or tort, which CANDIS O. RAY, both individually and for and on behalf of, and trading as CANDIS O. RAY AGENCY, now have, or might have, or ever had, or might have had, or ever can or may in the future have against the said KAN-

SAS CITY STOCKYARDS COMPANY OF MAINE, a corporation, trading as GOLDEN OX RESTAURANT, and NATIONAL BROADCASTING COMPANY, INC., a corporation, their successors and assigns, their past and present officers, directors, stockholders, employees, agents (except the remaining defendants to the said Civil Action No. 187-65) attorneys, and all other persons acting on their behalf, arising out of any act or omission, transaction, matter or thing, down to the date of this Agreement.

6. KANSAS CITY STOCKYARDS COMPANY OF MAINE, a corporation, trading as GOLDEN OX RESTAURANT, and NATIONAL BROADCASTING COMPANY, INC., a corporation, hereby release and discharge CANDIS O. RAY, individually and trading as CANDIS O. RAY AGENCY, of and from all manner of action or actions, suits, debts, claims, liabilities, controversies, damages and demands, whether in law or in equity, contract or tort, which the said KANSAS CITY STOCKYARDS COMPANY OF MAINE, a corporation, trading as GOLDEN OX RESTAURANT, and NATIONAL BROADCASTING COMPANY, INC., a corporation, now have, or might have, or ever had or might have had, or ever can or may in the future have against the said CANDIS O. RAY, both individually and trading as CANDIS O. RAY AGENCY, their successors, heirs, next-of-kin and assigns, arising out of any act or omission, transaction, matter or thing, down to the date of this Agreement.

IN WITNESS WHEREOF, the corporate parties to the aforegoing Agreement have caused these presents to be duly signed by their duly thereunto authorized agents and the said CANDIS O. RAY has thereunto set her hand and seal,

in the City of Washington, District of Columbia, as of the day hereinabove first written.

KANSAS CITY STOCKYARDS COMPANY OF MAINE

By /s/ Jay B. Dillingham
Its duly thereunto authorized agent.

GOLDEN OX RESTAURANT

By /s/ Jay B. Dillingham
Its duly thereunto authorized agent.

NATIONAL BROADCASTING COMPANY, INC.

By /s/ Hans A. Nathan
Its duly thereunto authorized agent.

CANDIS O. RAY AGENCY

By /s/ Candis O. Ray
Its duly authorized agent

/s/ Candis O. Ray
Individually

WITNESS THEIR RESPECTIVE COUNSEL:

/s/ James S. Gardiner, Jr.
Counsel for Candis O. Ray, individually
and Candis O. Ray Agency
* * *

/s/ Hans A. Nathan
Counsel for Kansas City Stockyards Company
of Maine, Golden Ox Restaurant and National
Broadcasting Company, Inc.
* * *

EXHIBIT I

ASSIGNMENT made this 26th day of August 1966 by CANDIS O. RAY of Washington, District of Columbia (Assignor), to KANSAS CITY STOCKYARDS CO. OF MAINE, a corporation trading as GOLDEN OX RESTAURANT (Assignee).

WITNESSETH:

WHEREAS, the Assignor, on June 12, 1964, registered for copyright with the Register of Copyrights in the Library of Congress a document entitlted "Spoken Commercials" Copyright C-16869, a copy of which is attached hereto as Exhibit A, and

WHEREAS, on June 17, 1964, the Assignor registered for copyright with the Register of Copyrights in the Library of Congress a document entitled "Spoken Commercials" Copyright C-16870, a copy of which is attached hereto as Exhibit B, and

NOW, THEREFORE, the parties hereto, in consideration of (1) the mutual covenants herein contained, (2) the settlement of Civil Action No. 187-65, (3) certain monies paid by the Assignee to the Assignor, and (4) for other valuable consideration, receipt of all of which consideration is hereby acknowledged, agree as follows:

1. Assignor hereby assigns to Assignee all her right, title and interest in the material contained in the documents registered as Copyrights No. C-16869 and C-16870 aforesaid and in said copyrights to the Assignee, and by this instrument intends to transfer all her rights of any nature whatever to said copyrights, said material, or any idea, expression, combination of words or other matters contained therein.

2. The Assignee covenants not to sue Assignor for infringement of the copyrights herein assigned if Assignor uses any of the ideas contained in said copyrights in her capacity as the owner or employee of an advertising agency,

provided, however, Assignor shall not use the following combination of words:

"owned and operated by the Kansas City Stockyards known the world over as purveyors of the FINEST quality beef available"

"The Kansas City Stockyards Company presents magnificent meat chosen from the stockyards where the 'Steak is Born'".

"Washington's finest beef specialty house, owned and operated by the world-famous Kansas City Stockyards Company, purveyors of fine beef for over a century . . . . . shipped direct from the Kansas City Stockyards. . . . . and from choice corn fed steers."

"The Kansas City Stockyards, famous the world over for its Cattleland and choice beef."

"owned and operated by the Kansas City Stockyards where the steak is born."

"where 'Beef is King, and the King of Beef is served'."

IN WITNESS WHEREOF the parties have signed and sealed this Assignment.

CANDIS O. RAY
CANDIS O. RAY AGENCY
Assignor

By /s/ Candis O. Ray

THE KANSAS CITY STOCKYARDS CO.
Assignee

By /s/ Jay B. Dillingham

ATTEST:

/s/ T. M. O'Neal
(SEAL)

EXHIBIT J

PRAECIPE

UNITED STATES DISTRICT COURT
For the District of Columbia

[Caption omitted in printing]

The Clerk of said Court will enter upon the docket that the complaint against the Kansas City Stockyards Company of Maine and National Broadcasting Company, defendants and the counterclaim of Kansas City Stockyards Company of Maine, Inc. against the plaintiff are settled and dismissed with prejudice.

/s/ James S. Gardiner
Attorney for Plaintiff

Consented to:
Hans A. Nathan
Attorney for Kansas City Stockyards
Co. of Maine & NBC

EXHIBIT K

UNITED STATES DISTRICT COURT
For the District of Columbia

[Caption omitted in printing]

MOTION TO SET ASIDE PARTIAL SETTLEMENT AND TITLE TRANSFER EFFECTED UNDER DURESS

Comes now the Plaintiff, by and on behalf of herself, states the following:

1. That on January 25, 1965, counsel for Plaintiff filed in the United States District Court For the District of Columbia an Infringement of Copyright, Breach of Contract and Monies Owed suit, Civil Action No. 187-65.

2. That this Court has jurisdiction of this cause and action pursuant to Title 28, #1358, United States Code.

3. That Plaintiff filed suit because of deliberate violations of Infringements of her protected works under the United States Copyright Registration Numbers 16869 and 16870, titled "Spoken Commercials" after defendants had been noticed of copyright ownership of Plaintiff.

4. That Defendants were duly notified of copyright ownership by Plaintiff on date July 10, 1964 by first class mail, which notice was acknowledged as having been received (see deposition testimony). However, Defendants continued willfully and deliberately to infringe said copyrighted material from the first day noticed and on to the time when a partial settlement was offered by the Defendants, releasing two of the four defendants, on date August, 1966.

5. The Defendants' partial settlement offer carried with it a demand for complete title transfer of Plaintiff's copyrighted material, and release of all infringements with the two party defendants to the four party defendant suit for an amount of $2,000.00 ($500.00 of which would be paid to Plaintiff's counsel), although the value of $20,000.00 had been placed on the copyrighted material by the Plaintiff in a formal conference in defense counsel Hans A. Nathan's

Office Prior to the filing of the suit on request of Defense counsel Nathan to place a value on the copyrighted material.

6. That Plaintiff was under heavy sedatives and the care of a doctor at the time of the effected partial settlement (see attached hereto certification from Plaintiff's doctor, Dr. John R. Ewan) and she was frieghtened by her counsel's constant threats that he would withdraw if she would not accept the offer by defense attorney for two of the defendants to suit; such forced release instrument and title transfer of copyrighted material is invalidated because Plaintiff was forced to agreement while under sedatives, and for further reason that the Partial Settlement and Title Transfer Instrument does not have Plaintiff's signature, to Plaintiff's knowledge. Plaintiff does not recall signing a Partial Settlement and Title Transfer Instrument, the same of which two copies were offered by the defense at the pretrial for Plaintiff's signature. Plaintiff declined signing.

7. That Plaintiff has not used any of the $1,500. given to her by counsel and offers to forfeit same, with the condition that her counsel forfeits the $500.00 which amount he kept out of the $2,000. all of which is to be returned to defendants at nullification of the forced Partial Settlement and Title transfer.

8. That the Partial Settlement and Title Transfer has not been acted on by the court, and it is the understanding of Plaintiff that the attorneys involved negotiated the agreement themselves. However, Plaintiff has observed that someone has marked the word "OUT" by the margin of two of the defendants on the court record.

9. Infringements of copyrighted material have continued by the defendants and extend beyond the two year period stated in paragraph 4 of this Motion at which time the forced Partial Settlement and Title Transfer was effected.

CRIMINAL and CIVIL Violations in effect:

U.S. Copyright (Section 506 Criminal Offenses, Title 17, U.S. Code - "(a) CRIMINAL INFRINGEMENT ....

any person who infringes a copyright willfully and for the purposes of commercial advantage. . . . shall be fined not more than $2,500.00 or imprisoned not more than one year, or both, for the first such offense, and fined not more than $10,000.00 or imprisoned not more than one year, or both, for any subsequent offense."

SUMMARY:

1. This court has jurisdiction over this cause and action.
2. Evidence proves infringement violations.
3. The Partial Settlement and Title Transfer with half of the four defendants effected under duress is void and null.
4. Both Civil and Criminal law applies in the Infringement violations.

Respectfully Submitted,

/s/ Candis O. Ray, plaintiff
t/a Candis O. Ray & Assoc.

• • •